

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)	
)	
vs.)	CAUSE NO. 3:09-CR-112 RLM
)	
JOHN R. HARRIS)	

OPINION and ORDER

John Harris was sentenced in December 2011 to a term of 326 months' imprisonment; no appeal was filed. In March 2012, Mr. Harris filed a petition under 28 U.S.C. § 2255 seeking to have his sentence vacated, set aside, or corrected because, he claimed, his attorney provided ineffective assistance at sentencing. The court held that Mr. Harris's petition was barred by the waiver in his plea agreement and denied the petition on March 21, 2012. Mr. Harris's appeal of the denial of his § 2255 petition was dismissed based on his failure to pay the appellate filing fee.

Mr. Harris is now before the court having filed a petition under 28 U.S.C. § 2255 in which he claims his sentence should be vacated, set aside, or corrected because, first, he wasn't mentally competent to enter a guilty plea and, second, his counsel provided ineffective assistance at the plea and sentencing phases of the proceedings. While Mr. Harris claims that "this is his first collateral challenge," Petn., ¶ 13, he is mistaken. The record of this action shows that his initial § 2255 petition was denied by this court on March 21, 2012, and the court of appeals

dismissed his appeal on June 14, 2012. Mr. Harris's current filing must be considered to be a second or successive petition under § 2255.

28 U.S.C. § 2244 provides that before a second or successive motion is filed with the district court, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." *See also* Rule 9 of the Rules Governing Section 2255 Proceedings ("Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals"). Because Mr. Harris hasn't alleged or established that he received proper authorization to file a successive motion, the court DENIES his petition filed March 19, 2015 [docket # 118] as not properly before this court.

SO ORDERED.

ENTERED: April 14, 2015

/s/ Robert L. Miller, Jr.
Judge, United States District Court

cc: J. Harris
AUSA Maciejczyk